



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

In the Matter of

**PORTIA OTTO ALAGBA AND 2 OTHERS V FEDERAL REPUBLIC OF
NIGERIA**

Application No: ECW/CCJ/APP/37/19; Judgment No ECW/CCJ/JUD/08/25

JUDGMENT

ABUJA

28 February 2025

JUDGMENT NO. ECW/CCJ/JUD/08/25

MRS PORTIA OTTO ALAGBA & 2 ORS

- APPLICANT

V

FEDERAL REPUBLIC OF NIGERIA

-RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES

- Presiding

Hon. Justice Dupe ATOKI

- Judge Rapporteur

Hon. Justice Edward Amoako Asante

- Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA

- Chief Registrar



REPRESENTATION OF PARTIES:


Soala Jumbo Esq.

- Counsel for the Applicant

Maimuna Lami Shiru (Mrs.)

- Counsel for the Respondent



I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as “the Court”) delivered in open court.

II. DESCRIPTION OF THE PARTIES

2. The 1st Applicant, Mrs. Portia Otto Alagba claims to be married to one Mr. Joseph Izu (deceased) under native rites, the 2nd Applicant Miss Izu Stepheny Umefien, allegedly the daughter of the deceased, a minor sues through her mother the 1st Applicant. While the 3rd Applicant Mr. Rueben Izu, claims to be the younger brother to the deceased. They are all community citizens - Nigerian residents of River State, Nigeria suing on behalf of Mr. Joseph Izu (Deceased) (hereinafter referred to as “Applicants”).
3. The Respondent is the Federal Republic of Nigeria a Member State of the Economic Community of West African States (ECOWAS), signatory to the ECOWAS Revised Treaty, the African Charter on Human and Peoples’ Rights, and other international human rights instruments (hereinafter referred to as the “Respondent”).

III. INTRODUCTION

4. This Application alleges the violation of the victim’s right to life and fair hearing as guaranteed by Articles 4 and 7 of the African Charter on Human and Peoples’ Rights (African Charter) on the premise that one Mr. Izu Joseph was allegedly killed by the Nigeria Army by a riverside in Okarki Community of River State, Nigeria.

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed on 14 October 2019 and served on the Respondent on 30 October 2019.
6. The Respondent filed a Motion for Extension of Time and the substantive defense on 30 April 2021 and the motion was served on the Applicants on 3 May 2021.
7. The Respondent filed a Notice of Preliminary Objection on 7 June 2021 and the Notice was served on the Applicant on 8 June 2021.



8. The Applicants filed Motion on Notice to call witnesses on 21 September 2021 and the Notice was served on the Respondent on 24 September 2021.
9. The Respondent filed a Motion on Notice to call witnesses on 1 February 2022 and the Notice was served on the Applicants on 1 February 2022.
10. The Respondent filed further Motion on Notice to call witnesses on 14 March 2022 and the motion was served on the Applicants on 14 March 2022.
11. The Applicants filed a Witness Statement on Oath on 22 April 2022 and was served on the Respondent on 22 April 2022.
12. During the virtual Court hearing on 6 May 2024, the Applicants were absent and not represented in Court. The Respondent was present and urged the Court to strike out the case for lack of diligent prosecution by the Applicants. The Court rejected the submission and asked the Respondent to proceed with its case. The Respondent moved its motion for Preliminary Objection and ruling on the same adjourned.
13. Ruling on the Preliminary Objection on the jurisdiction of the Court was delivered on 06 June 2024 dismissing the objection of the Respondent.
14. At the resumed virtual hearing on the substantive case on 13 November 2024, parties were represented by counsel. Both counsels orally moved to discard the application to call witness in the matter. They therefore adumbrated on the merit of the case and the matter was accordingly adjourned for judgment.

V. APPLICANT'S CASE

a) Summary of facts

15. The 1st Applicant claims to be married to one Mr. Joseph Izu together with the 2nd Applicant alleged to be their daughter and the 3rd Applicant, claiming to be

the brother of the deceased have jointly filed this application on behalf of Mr. Joseph Izu.

16. The Applicants claim that the said Mr. Joseph Izu who was a footballer with Shooting Star of Ibadan, Oyo State, Nigeria, visited his community during a holiday. That on 16 October 2016, he went to Okarki riverside to take his bath, and in the cause of the unfolding event he was accosted by men of the 2 Brigade, Nigerian Army, led by one Major Mustapha Mohammed on operation “confidence building exercise” set up to rid criminal activities in the area.
17. They alleged that during the operation, Mr. Izu was shot in the leg and the waist region despite his plea that he was not a criminal as alleged by the soldiers, insisting that he was a footballer and presented his identity card to prove same.
18. They submit that despite the presentation of his identity card and being unarmed, helpless, and pleading for his life, Mr. Izu was shot at close range dragged into the river and left in pain.
19. On the departure of the soldiers, some members of the community found that the deceased was still alive but bleeding profusely. He was rescued from the river but died on the way to the hospital.
20. The Applicants submit that due to the celebrity status of the victim, there was an uproar, and the incident was reported in several national and international news media. In reacting to the news, the Nigerian Army through the Commander 2 Brigade explained that their officers had stormed the hideout in Okarki Village, Ahoada West LGA of River State in an effort to rid the community of cultists, kidnappers, and other criminal activities.
21. They confirmed that during this operation one person lost his life while several others fled. It was later confirmed that the deceased referred to was Mr. Joseph Izu and the Nigerian Army however promised to carry out a detailed investigation into the killing.

22. The Applicants further submit that in an attempt to unravel the cause of death of Mr. Joseph Izu they wrote letters of appeals and petitions to several agencies of government namely: the Nigerian Army, the National Assembly, and the National Human Rights Commission.
23. That in response to their complaints, that a Presidential Panel was set up in 2017 to review the compliance of the Nigerian Armed Forces with human rights obligations and rules of engagement during the said operation.
24. That at the conclusion of the hearing, a report with recommendations was submitted to the Government in February 2018 but same has not been made public neither has any action been taken in respect of the said report.
25. Having failed to secure justice from the Respondent, they have therefore filed the instant Application before this Court.

b) Plea in law

26. The Applicants rely on the following laws:

- i. Article 9(4) of the Supplementary Protocol A/SP1/01/05;
- ii. Articles 1, 2, 4 and 7(a) of the African Charter on Human and Peoples' Rights;
- iii. Articles 3 and 9 of the Universal Declaration of Human Rights;
- iv. Section 33 of the 1999 Constitution of the Federal Republic of Nigeria;
- v. Articles 2 and 6 of the International Covenant on Civil and Political Rights;
- vi. Section 36 of the 1999 Constitution of the Federal Republic of Nigeria.

c) Reliefs sought

27. The Applicants pray the Court to grant the following reliefs:

- i. A Declaration that the killing of Mr. Joseph Izu is a violation of the right to life assured and guaranteed under Article 4 of the African Charter on Human and Peoples' Rights, Article 3 of the Universal Declaration of Human Rights, Section 33 of the 1999 Constitution of the Federal

Republic of Nigeria and Article 6 of the International Covenant on Civil and Political Rights.

- ii. A declaration that the Federal Republic of Nigeria has failed to protect and guarantee the right to life assured under the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Constitution of the Federal Republic of Nigeria and has failed to give effect to the right in the case of the death of Mr. Joseph Izu.
- iii. An order directing the Respondent to pay compensation in the sum of #2,000,000,000 (Two Billion Naira) Only, to the Applicants herein.
- iv. An order enjoining the Respondent to take appropriate steps to investigate the killing of Joseph Izu for the purpose of bringing criminal proceedings against the perpetrators.
- v. Interest at the rate of 15% per annum on the judgment debt from the date of judgment until the judgment debt is finally liquidated.
- vi. An apology from the Federal Republic of Nigeria to the Applicants herein for the violation of the Applicant's rights in the case of killing of Mr. Joseph Izu which apology shall be published on a full page in 2 Newspapers having national circulation in Nigeria.

VI. RESPONDENT'S CASE

a) Summary of facts

28. The Respondent denied each and every material allegation of facts as contained in the Application except where specifically admitted.

29. They recount that on the day of the incident, troops of the Nigerian Army received intelligence report about cultists in a suspected criminal hideout in Okarki Community who were terrorizing the village and its neighbouring areas. Accordingly, the troops approached the hideout and in the course of discharging their military duties, they were shot at by the cultist which led them to return fire. As a result, Mr. Joseph Izu was caught in the crossfire and lost his life.

30. The Respondent affirmed that troops are expected to abide by the Rules of Engagement (ROE) for that operation and are only permitted to use lethal force

only when their life or property or that of the public is in danger. However due to the fact that the troops came under fire they had no other option but to return fire in order to preserve their lives and the lives and properties of members of the community.

31. The Respondent argued that the allegations presented by the Applicants are not within their knowledge and do not represent the true and correct position therefore amounts to hearsay evidence.
32. That the accounts given by the Applicants of the incident is tainted and tweaked to support their version of what transpired on that fateful day, and that it has not been established whether the fatal bullet that hit the deceased in the course of the crossfire was from the troops or that of the criminal elements.
33. The Respondent acknowledged its duty and obligation to promote and protect the rights of its citizens or nationals against human rights violation by any community, institution or an official of the community in exercise of its official functions and further states that it has never relented in this regard.
34. The Respondent maintained that the right to life under Article 33 of the 1999 Constitution is not absolute as in certain circumstances the exception to the right will be applied. Thus, it cannot be held liable in the case of the alleged victim, in which the circumstances surrounding his death was sequel to the discharge of their obligation to safeguard the lives of the community of that area.
35. On the alleged denial of right to fair hearing, the Respondent state that the Applicants having admitted that their petition was heard by the Presidential Investigation Panel set up to look into various issues in this regard cannot claim to have been denied a fair hearing. That its efforts to investigate was confirmed by the Applicants in paragraphs 12, 13 and 14 of their narration of facts.
36. They restate that indeed a Presidential Panel was constituted to: a) look into and review the compliance level of the Armed Forces to extant laws and rules of engagement, b) investigate alleged human rights violations, the conduct of the

armed personnel in local conflict and insurgencies and c) recommend measures to curb/prevent violation of fundamental human rights during conflict situations.

37. The Respondent concluded that at the end of the investigation, the report with the recommendation of the panel was submitted to the President of Nigeria which cannot be implemented until it is approved by the President. They therefore insist that the Applicants were heard and as such were accorded fair hearing.

b) Pleas in law

38. The Respondent relies on the following laws:

- vii. Article 9(4) of the Protocol (as amended by the Supplementary Protocol);

c) Reliefs sought

39. The Respondent seeks the following relief from the Court;

- i. A Declaration that the Respondent has not violated the provision of the African Charter on Human and Peoples' Rights and any international treaties.
- ii. A declaration that the Applicants Application is frivolous and lacking in merit
- iii. An order dismissing the Applicants suit in its entirety.

VII. JURISDICTION

40. The Court having ruled on 6 June 2024 on the preliminary objection of the Respondent challenging the Jurisdiction of the Court and declared that it has jurisdiction to adjudicate over the instant Application, the matter of jurisdiction is settled and needs no further examination. See (ECW/CCJ/RUL/01/24).

VIII ADMISSIBILITY.

41. The admissibility of an application before the Court is premised on the compliance with the provision of Article 10 (d) of the Supplementary Protocol of the Court (2005) which provides that: "Access to the Court is open to:(d).

Individuals on application for relief for violation of their human rights; the submission of application for which shall: i) not be anonymous; nor ii). Be made whilst the same matter has been instituted before another international Court for adjudication."

42. The crux of the provision is the requirement of the proof of a victim status, the non-anonymity of the parties and the non-pendency of the action before an international tribunal of similar jurisdiction.
43. From the facts of the case, the parties are not anonymous and there is no evidence that the matter is pending before another tribunal. The only issue for the Court to determine is whether the victim status requirement has been satisfied by the Applicants to make their application admissible.
44. The Court has maintained that the standpoint of victim requirement is an essential criterion which enables it to declare whether an application for human rights violation is admissible, even though not an exclusive criterion. See ALHAJI MUHAMMED IBRAHIM HASSAN v. GOVERNOR OF GOMBE STATE & ANOR ECW/CCJ/RUL/07/12 Reported in 2012 CCJELR Pg 81 @ para. 46.
45. A victim includes a person who suffers, directly or indirectly any harm or pain (physical or mental injury) emotional suffering (through loss of a close family member or relation) economic loss (loss of properties) or any impairment that can be categorized as human rights violation, additionally, other than the loss, harm or damage, the Applicant must prove an interest in the matter which must be direct and personal. REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS JUDGMENT NO. ECW/CCJ/JUD/06/19 (Unreported)
46. The sum total of the above jurisprudence is indicative of the requirement of the Applicants to demonstrate prima facie, that he or she was affected by either law, policy, practice, or conduct of the Respondent State which is the cause of the alleged human rights violations.

47. This victim status can be attained either directly, indirectly or collectively as long as there exist a causal link between the victim and the harm alleged to have suffered.
48. The Court observes that the Initiating Application has been instituted by three (3) Applicants claiming a violation of the rights to life of Mr. Joseph Izu by agents of the Respondent, the capacity in which the 1st, 2nd and 3rd Applicants are before this Court therefore calls for examination.
49. Records are clear that Mr. Joseph Izu the alleged victim on whose behalf this application is filed is deceased. It is therefore impracticable to personally seek relief for the harm done to him. Thus, when it becomes impossible for him whose right is violated to insist on that right or to seek redress either because he is deceased or prevented in one way or the other from doing so, it is perfectly normal that the right to bring his case before the law Court should fall on another person close to him. STELLA IFEOMA & 20 ORS. V FEDERAL REPUBLIC OF NIGERIA (2015) CCJELR at page 7.
50. Therefore, where an Applicant is not the direct victim of the alleged human rights violation, they must at least show that they are indirect victims for the case to be admissible. Such indirect victims may include immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. THE UNITED NATIONS BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW GA RES. NO. 60/147 (2005) PRINCIPLE 8.
51. While the right to bring an action as an indirect victim avails another person close to the direct victim, such Applicant must provide evidence of their family or other close relationship to the direct victim, establishing their indirect victim status. Especially in a situation where the victim is deceased, anyone bringing an action as an indirect victim must be able to establish and convince the Court of their direct relationship with the victim. REV SOLOMON MFA & OTHERS v FEDERAL REPUBLIC OF NIGERIA (ECW/CCJ/JUD/06/19, para 51) UNREPORTED.



52. Considering that the Applicants alleged to be family members of the deceased they must substantiate their relationship with cogent and verifiable evidence to convince the court of the affinity. Such evidence of close relationships includes for spouses - a marriage certificate; for children - a birth certificate or other documents capable of proving affiliation; for parents - any attestation of paternity or maternity, such as a birth or adoption certificate, may suffice. (See BENEFICIARIES OF LATE NORBERT ZONGO (2015) 1 AfCLR 258, paras 51-54).

53. The Court will proceed to examine the claim of affinity to the deceased by the Applicants to determine their admissibility as an indirect victim with the capacity to sue on behalf of the said Joseph Izu.

With respect to the 1st Applicant

54. The 1st Applicant claim to be married to the deceased under the native rites. The Court has not been presented with any proof of the said marriage in form of a marriage certificate or any other evidence to support the solemnization of the union between her and the late Joseph Izu. Granted that the marriage was allegedly conducted in accordance with the native rites and tradition, where an official legal documentation may not be feasible, photographs or any other form of attestation will be sufficient to convince the Court as evidence of the conduct of the marriage.

55. The mere assertion of a relationship is not sufficient to allow an Applicant to invoke its relationship with the deceased. MAHAWA CHAM & SARJO CHAM V REPUBLIC OF THE GAMBIA ECW/CCJ/APP/26/23 Ph. 102. See also ADOU KOUAME & ORS V THE STATE OF IVORY COAST ECW/CCJ/JUD/46/23 Ph. 147.

56. In the absence of any evidence to support that she was married to the late Joseph Izu, the claim of the 1st Applicant that she is the wife of the deceased being unsubstantiated, fails. Consequently the basis to bring this application as an indirect victim being a family member falls out. The application of the 1st Applicant as a wife is therefore declare inadmissible.



With respect to the 2nd Applicant

57. The 2nd Applicant named Izu Stephany Umefien, is a minor identified as the daughter of the deceased. The 2nd Applicant assert that her father's death has profoundly affected her, resulting in severe pain and suffering, emotional and physical distress, trauma, and the loss of financial support, as she relied almost entirely on the deceased for her sustenance.
58. In proof of the affinity between her and the deceased, a birth certificate was attached to the Application as annexure 1 which was issued by the National Population Commission of Nigeria on the 20th of December 2012, indicating that Izu Stephany Umefien was born on the 15th of April 2008 at Okarki with IZU Umefien Joseph named as her father and Portia Otto named as her mother.
59. The Court recognises that the said birth certificate clearly identifies Joseph Izu as the father and the 1st Applicant as the mother of Izu Stephany Umefien. This certificate constitutes proof of a link which on its own establish that the 2nd Applicant had sufficient interest in the death of the deceased to act. The said document is therefore sufficient to ground the stance of the 2nd Applicant as an indirect victim. See NAZARE GOMEZ PINAS V GUINEA-BISSAU ECW/CCJ/JUD/15/18 @ PG. 8.
60. The Court, however, notes from the birth certificate that having been born on the 15th of April 2008, the 2nd Applicant was 11 years old when the instant Application was filed on 15th October 2019. Most international human rights instruments recognise the age of adulthood as 18 (eighteen) years being the threshold of legal adulthood, marking the point when an individual gains full legal rights and responsibilities.
61. In that Regards, Article 2 of the African Charter on the Rights and welfare of a child defines a child as: *"For the purpose of this Charter, a child means every human being below the age of 18 years."* This aligns with international standards set by the United Nations Convention on the Rights of the Child on the age of adulthood of a child. Consequently the 2nd Applicant though an indirect victim, but being a minor lacks the capacity to bring this action in her

own right. Her reference on the face of the Initiating Application as “2nd Applicant” is therefore a misnomer.

62. Having admitted the 2nd Applicant as an indirect victim but lacks the capacity to stand on her own before the Court, the Court takes note of paragraph 2 of the introductory section, which describes the parties and the capacities in which they are suing. It is clear that the 1st Applicant, being her mother, is suing on her behalf.
63. This is in consonance with Article 20 (b) of the MAPUTO Protocol which provides that: *“A widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interest and the welfare of the children”*.
64. For the reasons above stated, the Court finds that for the purposes of this Application, Izu Stephany Umevien being unable to pursue this action in her own right but being represented by her biological mother, the application brought on her behalf by the 1st Applicant is thus admissible

With respect to the 3rd Applicant

65. With regards to the 3rd Applicant, who claims to be the brother of the deceased, the Court must evaluate whether the evidence provided is sufficient to establish a close family relationship to enable him act as an indirect victim in this suit.
66. As stated earlier, the essential criterion for a human right Application is for the Applicant to be a victim of the human rights violation either directly or indirectly and it is up to the Applicant to prove his/her locus standi in this regards. See MADAM SESSI MELE V STATE OF THE TOGOLESE REPUBLIC ECW/CCJ/JUD/29/21 Pg. 19.
67. The admissibility of an Applicant as an indirect victim is thus unlikely to pass the test in the absence of proof of the degree of consanguinity between the 3rd Applicant and the deceased whom he claims to be closely related to. The requirement of proof in this regard is sacrosanct. See REV. FR SOLOMON MFA supra.



68. In proof of his relationship with the deceased, the 3rd Applicant annexed as evidence his voters' card Annexure 2 which has the name "Mr. Rueben Izu" scripted on it and several photographs of himself and the deceased taken together. While the Court notes the similarity of the surname with that of the deceased however, names when not patented are available for the public use thus devoid of exclusivity. The voter's card is therefore not compelling enough as evidence to support the proof of a consanguine relationship with the deceased.
69. In recent times, the most accurate evidence to prove a biological relationship is a Deoxyribonucleic acid (DNA) test that shows the scientific genetic markers as a basis upon which the sibling relationship is to be determined. In the event that this is onerous or not feasible, the birth certificates of both the deceased and the party as indicative of same parenthood is of sufficient probative value. Additional proof of ties or links in the form of parental testimony or Affidavit attesting to the sibling relationship is at the minimum sufficient.
70. Annexure 6 consists of a photograph in which the Applicant was taken alongside the deceased. However, in the view of the court, these photographs equally lack the evidentiary weight required to establish such biological relationship.
71. The absence of any piece of evidence relevant to establish the lineage between the deceased and the 3rd Applicant is therefore fatal to his case as an indirect victim. The Court therefore finds that the 3rd Applicant not being a proven relation of the deceased is devoid of any interest to enable him institute this action as an indirect victim. See ALH MUHAMMAD IBRAHIM HASSAN V GOVERNOR OF GOMBE STATE & FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/RU//07/12 @ pg. 83
72. In the light of the foregoing, the Court holds that the Application in respect of the 3rd Applicant is inadmissible.



73. The Application in respect of 1st and 3rd Applicants having been declared inadmissible, the Court will therefore proceed to examine the Application as it concerns only the 2nd Applicant - Izu Stephany Umefien represented by her mother.

IX MERIT

74. In analysing the facts of this application on merits, the Court has distilled the following issues for determination and same will be addressed seriatim:

- i. Violation of Article 4 of the African Charter
- ii. Failure to carry out an effective investigation into the alleged killing of the Applicant's father.
- iii. Violation of Article 7 of the African Charter

On the alleged violation of right to life of Mr. Joseph Izu

75. The graver man of this Application is the unlawful killing of Mr. Joseph Izu, a professional footballer with the Shooting Stars Football Club of Ibadan, Nigeria who was the father to the Applicant in this case.

76. The Respondent's defense is that based on the information received by the Army indicating the presence of suspected cultists in a hideout in Okarki community, they carried out an operation there to restore peace in the face of activities of cultists and criminal elements. During the raid to arrest the criminals, one Mr. Joseph Izu lost his life while several others fled.

Analysis of the Court.

77. Ahead of the examination of the Court on the merit of this application, it is imperative at this stage to state that the foremost principle of State Obligation under International Human Rights Law is that Member States being signatories to international human right instruments are primarily liable for violations of the rights thereon. Nevertheless, for the purpose of International law, the State consists of different organs with different functions and is treated as a unit so that the action of any of these organs is considered the action of that single legal entity. In the light of the above a Respondent will be liable for the wrongful acts



78. Consequently, in the examination of the instant application, all action and their consequences ascribed to any organ of the Respondent will be deemed that of the Respondent with the attendant liability.
79. The crux of the Applicant's case is that the Respondent arbitrarily killed her father contrary to Article 4 of the African Charter on Human and Peoples' Rights which provides that *'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.'*
80. The right to life is supreme and sacred and therefore should not be subjected to any form of arbitrary deprivation. Undisputedly, the right to life is the fulcrum upon which all other rights stand hence its inviolability. See MS. ROSE BREIVOGEL & ANOR. VS. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/05/22 @ pg. 18 para 60.
81. This right is not to be interpreted narrowly as it encompasses the entitlement of individuals to be free from acts or omissions intended or expected to cause their unnatural or premature death as well as enjoy life with dignity.
82. Article 4 obliges States to protect the right to life of all citizen under their domain by amongst others establishing a legal framework to ensure the full enjoyment of the right to life by all individuals. The duty extends to obligations to take appropriate legal measures to prevent arbitrary deprivations of life and prevent all foreseeable threats including from government agents, private persons and other entities.
83. The crux of Article 4 of the Charter therefore entrusts an obligation on State parties to ensure that the life of its citizens is secured which is sacrosanct and must be jealously guarded against any form of arbitrariness or unlawful killings.

84. Considering that the case of the Applicant is that the Respondent arbitrarily deprived her father (Joseph Izu) of his right to life, the Court in determining this allegation is obliged to establish that the victim actually died and secondly that the Respondent can be held responsible for the death of the victim either by an overt act or omission to act. See WING COMMANDER DANLADI ANGULU KWASU v. REPUBLIC OF NIGERIA ECW/CCJ/JUD/04/17.

▪ *Proof of the death of the victim*

85. The case of the Applicant is that the victim a popular football star who was at the riverside to take a bath was shot twice by men of the Nigeria Army and thereafter dropped him in the river despite presenting them with his identity card. He was rescued by a group of youth in the community but died before getting to the hospital.

86. It is trite that he/she who alleges must prove. In this regard, the Court has no record of any eyewitness account of any one who was present during the occurrence of the events alleged by the Applicant. Therefore, evidence on how or who killed the victim is not in the record of the Court.

87. The Court therefore holds that all facts alleged by the Applicant in respect of the events leading to the death of the deceased at the riverside are based on third party narration which the Court considers as hearsay evidence devoid any probative value.

88. While the Court comes to this conclusion as it relates to the absence of eyewitness testimony on how the victim died, the Court takes cognisance of some documentary evidence submitted by the Applicant including the coroner's report conducted in respect of the deceased as well as the Respondent's confirmation of the deceased death.

89. The coroner's report confirms the deceased as a male whose name was Joseph Izu and who died possibly on the 16th of October 2016 of 'haemorrhagic shock from multiple bullet injuries'. See annexure 8.



90. Of further note is the Respondent's confirmation of the death of the deceased which they stated in paragraph 5 of their defence thus: *"The Defendant admits in part paragraphs 2, 4, 9, 10, 12, 20, 27, and 30 and wishes to state that the army troops had received an information report indicating the presence of suspects and suspected cultist in a suspected criminal hideout in Okarki Community. It was during the raid done in order to arrest the criminals that one person Mr. Joseph Izu (the deceased) lost his life while several others fled."*
91. The combination of the coroner's report and the Respondent's confirmation of death is reliable and sufficient evidence to prove that the deceased in the instant case is the same as Mr. Joseph Izu who died on the 16th October 2016 as alleged by the Applicant. The Court is therefore convinced that Mr. Joseph Izu died as alleged by the Applicant, consequently the Court holds that the first component in proving the violation of the right to life has been established.
- *Proof that Respondent is responsible for the death of the deceased*
92. Having proved that Joseph Izu was the deceased in question and established that he died as alleged by the Applicant, the Court must examine the facts submitted by both parties to determine how the deceased died and who can be held responsible for the death.
93. The Respondent did not deny that some soldiers were at the riverside where the deceased was allegedly taking a bath but maintained that *".....My lord, by virtue of Section 33 (2) (c), it is our submission that though the deceased died while the agents of Respondents were carrying out an operation he cannot be said to have been deprived of his life in contravention of Section 33 of the Constitution of the Federal Republic of Nigeria....."* Paragraph 4(6) of the defense statement.
94. The totality of these averments by the Respondent is a clear acceptance that the deceased died in the course of their engagement at the riverside, their culpability for his death is however disputed. Consequently it becomes imperative for the Court to determine from the facts submitted by parties how the deceased was killed and attribute appropriate responsibility.

95. In that regards, the Court notes that the Coroner's finding puts the cause of death of the deceased as due to 'hemorrhagic shock from multiple bullet injuries'. Considering that bullet injuries can only be sustained from a gunshot, the Coroner's report is a clear indication that the deceased died of injuries sustained from bullets from gunshot. The Court is inclined to find that the Respondent fired the bullets lodged and found in the body of the deceased. This inclination is supported by the averment of the Respondent exempting any liability in the death of the deceased on the basis that the "*officers of the Nigeria Army were only performing their statutorily duty using necessary available force [emphasis ours] to promote peace, protect life and property, apprehend offenders and preserve law and order in the Orkarki community when unfortunately Mr. Joseph Izu lost his life, therefore, the Respondents cannot be held accountable for the deprivation of his life*".
96. The understanding of the Court in this regards is that the Respondent confirmed that the soldiers used some level of force in apprehending the alleged cultist during which the deceased lost his life. The question is what instrument soldiers use to exert force in the ordinary course of the discharge of their duty. The natural answer in the Court's opinion is that the instrument of engagement of soldiers are primarily guns of different calibres.
97. The Court recalls that the Respondent contended that it has not been established whether the fatal bullet that hit the deceased in the course of the crossfire was from the troops or that of the criminal elements. While there was no forensic report in that regards, if there was indeed a cross fire, there was no evidence that any of the troops was equally injured by bullets from the guns of the cultists. It is difficult to believe that the cultist missed all the troops but was able to fall only one of their own.
98. In view of the Coroner's report attributing the cause of death of the deceased to bullet injuries and the Respondent's confirmation that the soldiers "*used necessary available force when unfortunately Mr. Joseph Izu lost his life*", the Court therefore finds that the gunshot wounds found on the deceased were inflicted by the Respondent and are therefore prima facie responsible for the death of the deceased having used force from a gun that killed him.



99. Having held that the Respondent is prima facie responsible for the death of the deceased contrary to Article 4 of the African Charter that prohibits arbitrary deprivation of the right to life, the Court is mindful of the fact that the right to life is not absolute as it can be derogated from to the extent that the deprivation is not arbitrary.
100. The Court must therefore proceed to determine whether or not the shooting of the deceased was arbitrary to reach an appropriate decision.
101. An act is termed to be arbitrary where it is not lawfully founded. Therefore, any and all arbitrary killings committed within a State are considered grave. See MRS. HELEN JOSHUA & ANOR. V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/23 pg. 37/38 para 97.
102. Considering that an act will not be arbitrary if it conforms with the law, in this regard the Court must determine whether the killing of the deceased was justified by law especially in the light of the arguments canvassed by the Respondent that *Section 33 (2) (c) shields the Respondents from any liability resulting from the death of the deceased and hence, the Respondents cannot be lawfully held liable for the loss of life of the deceased*". See Paragraph 4.6 of defense.
103. The understanding of the Court from above averment is that while the Respondent accepts that the deceased died in the course of their raid and arrest of cultist at the riverside, their action is lawful under Section 33 (2) (c) of the Constitution of the Federal Republic of Nigeria (1999).
104. In this regard, the Court is therefore obliged to examine this provision of the Constitution to determine whether or not the deprivation of the life of Joseph IZU by the Respondent is in consonance with the provision and therefore lawful. In that regards, the whole of Article 33 (2) (a)-(c) will be reproduced to give a holistic understanding of sub-section (c) which the Respondent cited as relevant to their action.
105. Article 33 (2) provides that "*A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the*



use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary;

- a) for the defense of any person from unlawful violence or for the defense of property;*
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or*
- c) for the purpose of suppressing a riot, insurrection or mutiny.*

106. The implication of the totality of Section 33(2) the Constitution of the Federal Republic of Nigeria is to exonerate any act that results in the death of a person where such force used is as reasonably permitted by law for these purposes; a) preventing unlawful violence or defence of property, b) to effect a lawful arrest and, c) for the suppression of a riot, insurrection or mutiny.

107. Section 33(2) (c) is the specific portion of the law under which the Respondent takes cover to exonerate the soldiers from any liability resulting from the death of the deceased, imputing legality to the actions of the Army. The import of this section is to validate the deprivation of life if it arises from the lawful use of force, provided such force is reasonably necessary for the purpose of suppressing a riot, insurrection, or mutiny.

108. In that regards, two critical conditions must be satisfied for the Respondent to invoke this provision as justification for actions undertaken by its officials in the course of their duties:

- The use of force must be permitted by law and reasonably necessary.
- The force must be exerted for a lawful purpose, specifically to suppress a riot, insurrection, or mutiny.

109. In this wise, it is imperative for the Court to first determine the purpose of the use of force in question before proceeding to assess whether the use of force was reasonably necessary and permitted by law under the specific circumstances of the case. The essence of this provision is that there must be a clear and lawful purpose justifying the action.

110. To ascertain whether the actions of the Respondent fall within the scope of Section 33(2) c, it is necessary to examine the meaning of the terms "riot," "mutiny", and "insurrection".



- **Insurrection:** The Black's Law Dictionary (7th Edition) defines insurrection as "a violent revolt against an oppressive authority, usually a government." This connotes an action by a group of persons in a collective act aimed at an authority. The deceased being an individual cannot reasonably be said to be capable of committing insurrection against an authority. While the Respondent alleged that the deceased was in the company of other persons suspected to be cultists, in their words "*an information report indicating the presence of suspects and suspected cultist in a suspected criminal hideout in Okarki Community*", there is no evidence before the Court indicating that the suspects were carrying out activities that constitute a violent revolt against the authority. Besides, the authority which the deceased was revolting against was not indicated. They are alleged to be in a hideout which obviously connote that their activities are confined to the private hideout where they are alleged to operate. The Court is of the considered opinion that the facts of this case do not amount to a violent revolt as anticipated by the definition. The Court finds that the claim of insurrection does not avail the troops and the use of force that killed the deceased cannot be justified under Article 33(2) (c) for the Constitution of the Respondent.

- **Mutiny:** The Black's Law Dictionary (9th Edition) defines mutiny as "an insubordination or insurrection of the Armed Forces against the authority of their commander; a forcible revolt by members of the military against constituted authority, usually their commanding officers." The deceased in the instant case was not a member of the military and is therefore not capable of carrying out an act of mutiny. The provision not being applicable to the deceased cannot exonerate the Respondent from the use of force that killed the deceased and consequently not available as a defense under Article 33(2) (c) of the 1999 Constitution of the Respondent.

- **Riot** has been described by the same Dictionary as:
 1. "An assemblage of three or more persons in a public place taking concerted acts in a turbulent and disorderly manner for a common purpose, regardless of the lawfulness of that purpose."




2. "An unlawful disturbance of the peace by an assemblage of usually three or more persons acting with a common purpose in a violent or tumultuous manner that threatens or terrorizes the public or an institution."

111. The records before the Court do not suggest that the deceased engaged in any unlawful or violent activity. While the averment of the Respondent is that the Army received intelligence information of activities of cultist in the vicinity, and proceeded to dispel them, the Respondent has not convinced the Court that the conduct of the alleged cultists constituted or had the potential to cause turbulent, disorderly acts that threatens or terrorize the public or an institution. The defense that the deceased was engaged in act amounting to riot does not avail the Respondent.
112. In light of the reasoning above, the Court is of the considered view that the Respondent has failed to demonstrate that the deceased committed any act necessitating suppression by its officials. Specifically, the Respondent has not provided any concrete evidence to substantiate its claim that the deceased's actions fell within the scope of the exceptions under Section 33(2) (c) of the 1999 Constitution.
113. It is a settled principle of law that the burden of proving the existence of alleged facts lies on the party making the allegation. The Court has time and again stated that a party making an assertion has an obligation to support same with uncontroverted evidence. Claims without evidence, are viewed as mere statements that have been explained without evidence to persuade this Court of its veracity. MATTHEW ISABU V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/41/22 @ pg.25 para 79.
114. In all, the Court is convinced that the facts before it do not demonstrate a justification anticipated under the provision of Section 33(2) (c) of the Constitution of the Federal Republic of Nigeria and finds that the defence advanced by the Respondent is not supported by the constitutional framework. The Court therefore holds that the killing of Mr. Joseph Izu is unlawful and inconsistent with the principles of legality.



115. Given that the Respondent's failure to substantiate the purpose behind the killing of the deceased renders the act unlawful void ab initio, any determination regarding the use of force permitted by law and its reasonable necessity is of no moment.

116. Consequently, the Court holds that the deprivation of the life of Mr. Joseph Izu not being in accordance with law of the Respondent is arbitrary and a violation of Article 4 of the African Charter.

On failure to carry out an effective investigation into the unlawful killing of the Mr. Joseph Izu.

117. The case of the Applicant is that in their efforts to ensure that the matter is investigated, and the perpetrators are brought to book, they filed several petitions to various organs of the Respondent namely;

- Complaint to the human rights desk of the Nigerian Army (Annexure 5).
- Petition to Member representing Ahoada West/Ogba Egbema/Ndoni Federal Constituency in the House of Representatives (Annexure 6).
- Complaint to Akinima Division of the Police Force on 16th October 2016.
- Petition and Supplementary petition to the National Human Rights Commission (Annexure 9 & 10).
- Petition to the Presidential Panel (Annexure 12) 26th September 2017.

a) The Applicant claimed that only the Presidency responded positively to the petition by setting up a Presidential Panel for the Review of Compliance of the Armed Forces with Human Rights Obligations inaugurated by the President of the Respondent in 2017. The objective was to a). look into and review the compliance level of the Armed Forces to extant laws and rules of engagement, b) investigate alleged human rights violations, the conduct of the armed personnel in local conflict and insurgencies and c) recommend measures to curb/prevent violation of fundamental human rights during conflict situations.

118. The Applicant confirmed appearance and submission of relevant documents to the said panel but no action has been taken in respect of the investigation.

119. The Respondent on their part submit that at the end of the investigation, the panel submitted the report with recommendation for the approval of the Nigerian President following which it can be implemented. While the Report has not been approved for implementation as at the time of filing this action, the Respondent maintained that their duty to investigate the killing of Joseph Izu has been fulfilled.

Analysis of the Court

120. Having held that the killing of the deceased was unlawful, the Court is now well-placed to determine whether the duty of the Respondent to investigate and proffer an effective remedy has been duly fulfilled.

121. The State has the duty to protect all persons on its territory and to investigate and punish all acts of violence and violation committed on its territory. The duty of due diligence in international law enjoins a State to take action to prevent human rights violations, and to investigate, prosecute and punish the perpetrators when they occur. The State's failure or omission to take preventive or protective action itself represents a violation of basic rights on the State's part, which is because the State controls the means to verify acts occurring within its territory. See OBIOMA C.O. OGUKWE V REPUBLIC OF GHANA ECW/CCJ/JUD/20/16 @ pg. 13. See also MRS MODUPE DORCAS AFOLALU V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/15/14 @ pg. 13.

122. This duty is more imperative as it concerns the right to life which is the fulcrum of all other rights. In that regards, States have a responsibility under the African Charter to take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, thorough, and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents. See COMMENT 3 ON THE AFRICAN CHARTER ON HUMAN AND PEOPLE ON THE RIGHT TO LIFE See MRS. HELEN JOSHUA & ANOR. V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/22 @ pg. 37/38, para 97. See also DEYDA HYDARA JR & 2 ORS V. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/17/14 @ pg. 6.

123. The requirement for an effective investigation in the event of loss of life has been re-echoed by the Court in its line of jurisprudence. The State's obligation to protect the right to life underscore the obligation to carry out an effective investigation into any loss of life in consonance with the State's general duty under Article 1 of the African Charter. See DANIEL AGADA OKOH & 42 ORS. V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/04/21 @ pg. 28 para 77.
124. The uncontroverted fact before the Court is that the Respondent indeed carried out an investigation into the alleged unlawful killing of Joseph Izu by setting up a Presidential panel of enquiry into the conduct of Army in respect of the instant case. The Applicant participated in the hearing and submitted relevant documents. It is equally uncontroverted that the panel concluded the investigation and submitted the report to the Nigerian President for approval to implement the recommendations. However, the report as at the date of filing this action has not been approved for implementation.
125. The essence of an effective investigation into the violation of a human right is not only to unravel the event leading to the violation of the said right but to ascertain the perpetrators for prosecution and above all provide effective redress for the victims. These requirements are indeed an indispensable obligation of any State in matters like the instant one. See SIMEON BABANI SEIIDU ABU & 2 ORS v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/29/22 @ para 117. See also MARTHA ADAMU & 7 ORS v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/33/19 @ pg. 21.
126. From the facts before the Court, the investigation did not proceed beyond the submission of the report to the Nigerian President. The report is not in the public domain, so there is no public information about the content or and recommendations to ascertain whether any culpability was ascribed to the Army for the action of the troops in respect of the death of Mr, Joseph Izu.
127. Under this circumstance, it is impossible to conclude that perpetrators have been identified with the intent to prosecute as well as redress the victim in conformity with the responsibility of the Respondent.

128. The ultimate aim of an effective investigation into human rights violations is not only to identify the perpetrators but to punish them with the aim of ensuring non-repetition, deterrent, and compensate the victims of such violations. STELLA KUBAGEE & 4 ORS V GHANA supra pgs. 21-22 paras. 83-85

129. The core essence of punishment are deterrence, retributive, preventive, and reformative. An investigation of human rights violations that finds culpability but is devoid of these objectives cannot be regarded as effective in the eye of the law. It is an exercise in futility deprived of any value in proving compliance with the attendant obligation to investigate under Article 1 of the African Charter.

130. While the Court is convinced that an investigation was carried out by the Respondent, however with the report remaining unpublished and unimplemented, the Court gives no credence to the said investigation.

131. Accordingly, the court holds that the investigation carried out by the Respondent falls short of the standard of effectiveness. The Respondents are therefore in violation of their obligation to carry out a proper and effective investigation into the violation of the right to life of Mr. Joseph Izu.

On the violation of the right to fair hearing.

132. The Applicant alleged a violation of their right to fair hearing contrary to Article 7 of the African Charter as all authorities, persons and institutions whom they petitioned have not provided any reasonable recourse for the attainment of justice.

133. The Respondent on the other hand maintained that the Applicant was heard at the Presidential Panel of Investigation set up by the President of the Respondent and tasked with looking into the compliance of the Armed Forces of Nigeria with human rights obligations. Therefore, the claim of the Applicants that their right to fair hearing has been violated cannot stand.



Analysis of the Court.

134. The right to a fair hearing is captured under Article 7 of the African Charter. Article 7 (1) of the Charter provides that: *“Every individual shall have the right to have his cause heard. This comprises:*
- a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.*
 - b. The right to be presumed innocent until proved guilty by a competent court or tribunal.*
 - c. The right to defence including the right to be defended by counsel of choice*
 - d. The right to be tried within a reasonable time by an impartial court or tribunal.*
135. The right to a fair hearing is a fundamental principle of justice which ensures that individuals accused of a crime have a fair, impartial and public hearing before a competent, impartial and independent tribunal within a reasonable time. Article 7 of the African Charter therefore provides the indices for which fair hearing can be enjoyed.
136. From the submissions of the Applicant, several complaints were made to various national organs of the Respondent which include, the Nigerian Police, the Nigerian Army Human Rights desk, the Member of House of Representatives representing Ahoada West/Ogba Egbema/Ndoni Federal Constituency, the National Human Rights Commission and the Presidential Panel for the Investigation on the level of compliance by the military with human rights obligations.
137. The Applicant narrows their complaint regarding the violation of their right to fair hearing to National Human Rights Commission who allegedly failed to determine their petition within a reasonable time contrary to Article 7(1) d.
138. Indeed as submitted by the Applicant, The National Human Rights Commission (NHRC) Act 2010 CAP C23 LFN, Section 5 (a)-(c) vests the Commission with the power amongst others;

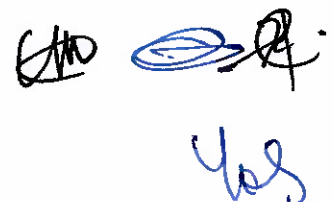


- a. To deal with matters relating to the promotion and protection of human rights, monitor and investigate all alleged cases of human rights violations in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance;
- b. Assist victims of human rights violations and seek appropriate redress and remedies on their behalf.

139. It is on this basis that the Applicant submitted a complaint to the National Human Rights Commission, seeking redress for the violation of the deceased's right to life. Their claim is that following the submission of the petition, no public hearing was conducted. Despite consistent follow-ups by the Applicant, the Commission, nearly two years after the petition was filed, sent a letter to the Applicant's Counsel (Annexure 11), stating its inability to proceed due to lack of response from the Nigerian Army. See 25-26 of the Initiating Application. To date, nearly three years after the incident, the Commission has neither taken further steps nor informed the Applicant of any action taken in this regard.
140. In response to the allegation of the violation of the Applicant's right to a fair hearing, the Respondent reaffirmed that the Applicant was indeed heard before the Presidential Panel thus the allegation cannot stand. However, with regard to the complaint filed by the Applicant before the Commission, the Respondent failed to address this issue in its defence. Nevertheless, the court takes cognisance of Annexure 11 submitted by the Applicant which is a letter is sent by the Commission to the Applicant on the 29th of August 2018 stating thus; *"The Commission wishes to inform you that a letter has been sent to the Chief of Army Staff and is awaiting response..."*
141. While Annexure 11 did not emanate from the Respondent as a defense to the allegation of undue delay in hearing the petition of the Applicant, the document having been lodged before the Court, the content therein becomes evidence which the Court is obliged to examine irrespective of the party from which it originated.

 
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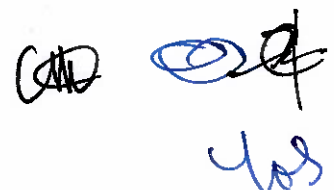
142. By this document, the understanding of the Court is that the failure of the Nigerian Army to respond to the Commission's letter effectively stalled the Applicant's proceedings as no further action has been taken up to the time of the filing of this Application.
143. The issue for the Court to determine is whether the failure of the Army to respond to the letter written by the Commission exonerate their failure to determine the Applicant's petition expeditiously. In doing this, while it is not in dispute that the Commission is empowered to investigate the violation of human rights, it is important to know the powers of the Commission to carry out effective investigation including powers to compel attendance, produce document and corresponding sanction for failure.
144. In this regards, Section 6(2) (b)-(e) of the NHRC Amended Act of 2011 empowers the Commisison upon obtaining an order of the Court to:
- (b) Summon and interrogate any person, body or authority to appear before it for the purpose of a public inquiry aimed at the resolution of a complaint of human rights violation;
 - (c) issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the Commission;
 - (d) compel any person, body or authority who, in its opinion, has any information relating to any matter under its investigation to furnish it with any information or produce any document or other evidence which is in his or her custody and which relates to any matter being investigated; and
 - (e) Compel the attendance of witnesses to produce evidence before it.
145. The Court is of the considered opinion that the above provision has not left the Commission without power to ensure the conclusion of the investigation in question. Rather, its implementation prevents impunity from high places. The failure of the Chief of Army Staff to respond to the letter of the Commission could therefore have been dealt with either by issuing a summon or upon continuous refusal to comply, a warrant to compel the Army officer to either attend the public enquiry or produce relevant documents as to assist in the investigation.

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146. As earlier indicated, the Commission did not proffer any defense for the alleged failure to hear the petition within a reasonable time. The Court therefore conclusively finds that the powers provided under Sections 6(2) (b)-(e) of the NHRC Amended Act were not activated to bring the investigation to an effective end.
147. The principle of a fair hearing within a reasonable time is fundamental to justice and enshrined in Article 7(1)(d) of the African Charter. Indeed, justice delayed is justice denied, as undue delays not only undermine confidence in the legal system but also cause hardship, uncertainty, and the perception of injustice. This principle is therefore inviolable. See *Zimbabwe Lawyers for Human Rights & Another v. Zimbabwe* (2008) AHLR 130 para 130.
148. In this wise, the Commission's failure to take steps provided by law to address the inaction of the Nigerian Army constitute a violation of the Applicant's right to a fair hearing within a reasonable time. See *Kessie Menveinoyou v. Togolese* ECW/CCJ/JUD/34/24, p. 52.
149. In light of the foregoing, the Court holds that the Applicant's right to a fair hearing provided under Article 7 (1) (a) & (d) of the African Charter has been violated by the Respondent.

REPARATIONS

150. In the present case, the Court has determined that the Respondent violated the Applicant's right to life through the unlawful killing of her father, the failure to investigate the killing and further infringed upon her right to a fair hearing. Consequently, the Respondent bears an obligation to provide appropriate reparations.
151. The concept of reparations encompasses the purpose, intent, and justification behind compensatory measures afforded to individuals or groups who have suffered human rights violations, injustices, harm, or exploitation. Reparations serve to acknowledge past wrongs, provide restitution, and promote justice and healing. In essence, they aim to deliver both material and symbolic justice to those affected by systemic oppression, exploitation, or violence.

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152. A State is legally obligated to provide full reparation for any injury resulting from an internationally wrongful act for which it is responsible. Such reparations should, where possible, restore the victim to their original condition. Where full restitution is impracticable, compensation may be awarded, and, in certain cases, an official acknowledgment or apology for the breach may significantly contribute to addressing the harm suffered. *MOUKHTAR IBRAHIM V. GOVERNMENT OF JIGAWA STATE & 3 ORS* (ECW/CCJ/JUD/12/14, PARAGRAPH 120); SEE ALSO *HAMMA HIYA & ANOR V. REPUBLIC OF MALI* (ECW/CCJ/JUD/05/21). See also The United Nations Basic Principles on Reparations, General Assembly Resolution 60/147 December 2005 Pg. IX
153. Accordingly, the Court will now proceed to determine whether the Applicant is entitled to the orders sought.
- i. An order directing the Respondent to pay compensation in the sum of #2,000,000,000 (Two Billion Naira) Only, to the Applicants herein.
 - ii. An order enjoining the Respondent to take appropriate steps to investigate the killing of Joseph Izu for the purpose of bringing criminal proceedings against the perpetrators.
 - iii. Interest at the rate of 15% per annum on the judgment debt from the date of judgment until the judgment debt is finally liquidated.
 - iv. An apology from the Federal Republic of Nigeria to the Applicants herein for the violation of the Applicant's rights in the case of killing of Mr. Joseph Izu which apology shall be published on a full page in 2 Newspapers having national circulation in Nigeria.
154. With respect to the first order, the Applicant sought compensation in the sum of ₦2,000,000,000 (Two Billion Naira) only. Given the irreversible nature of the violation in this case, since the deceased cannot be brought back to life, the provision of material or symbolic justice is imperative.
155. The Court considers the Applicant's claim for compensation to be appropriately classified as non-pecuniary or moral damages. The African Court of Human Rights has elaborated on the nature of such damages, emphasizing that they are awarded to compensate for suffering, psychological harm, grief,

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emotional distress, trauma, and loss of financial support. These damages encompass anguish, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm resulting from the violation. BENEFICIARIES OF LATE NORBERT ZONGO & 4 ORS V. BURKINA FASO (REPARATIONS) 2015 1 AFCLR 258.

156. Furthermore, it is a principle of international law that every person who has suffered a violation of his or her human rights is entitled to a fair and equitable remedy, considering that in human rights violations, full compensation is, as a rule impossible. See CHIEF SUNDAY ADEYEMO V REPUBLIC OF BENIN ECW/CCJ/JUD/50/23 @ pg. 24.
157. In this instance, the Applicant's severe pain and suffering, emotional and psychological distress, trauma, and financial dependence on the deceased justify an award for moral damages. The Court therefore finds that the Applicant is entitled to compensation. However, the amount claimed is deemed excessive and unrealistic.
158. Regarding the interest rate on the judgment debt, Applicant sought 15% per annum on the judgment debt from the date of judgment until the judgment debt is finally liquidated. In this regard, the Court decides that the Applicant is entitled to a percentage interest based on the prevailing savings rate applicable in the ECOWAS Bank for Investment and Development (EBID).
159. On the second order sought, the Court finds that the investigation conducted by the Respondent was inadequate, as it did not progress beyond the submission of a report to the Nigerian President. This falls short of the standard for an effective investigation. The Court therefore finds that the Applicant is entitled to an effective investigation into the killing of her father.
160. The Court declines the last relief of the Applicant requesting a public apology. The Court considers that other reliefs granted are sufficient and adequate to address the violations established in this case. The Court therefore

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finds no compelling justification to grant the request for a formal public apology in this instance.

COSTS

161. Article 66 (1) of the Rules provides, *"A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings."*

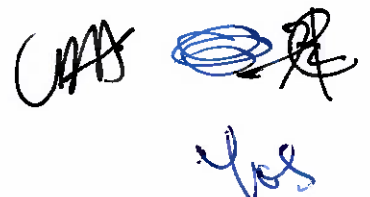
162. Having not prayed for costs, the Court will rely on Article 66 (11) of the Rules of procedure of the Court which states: *"If costs are not claimed, the parties shall bear their own costs."*

163. The Court therefore orders that all parties bear their costs.

IX. OPERATIVE CLAUSE

164. For the reasons stated above, the Court sitting in public after hearing both parties on the merits:

- i. **Declares** that the application is admissible with respect to the 2nd Applicant only.
- ii. **Declares** the application of 1st and 3rd Applicants inadmissible.
- iii. **Declares** that the killing of Mr. Joseph Izu is a violation of his right to life guaranteed under Article 4 of the African Charter on Human and Peoples' Rights.
- iv. **Declares** that the Respondent has violated the right to fair hearing of the 1st Applicant
- v. **Orders** the Respondent to take appropriate steps to investigate the killing of Joseph Izu for the purpose of prosecuting the perpetrators.
- vi. **Orders** the Respondent to pay compensation in the sum of N10,000,000.00 (Ten Million Naira) only to the 1st Applicant.
- vii. **Orders** the Respondent to pay interest to the Applicant in accordance with the interest rate of EBID as at the time the judgment sum is due to the date of payment.
- viii. **Declines** all other reliefs sought.



As to costs:

ix. Orders each Party to bear its own costs.

Hon. Justice Ricardo Cláudio Monteiro Gonçalves

Hon. Justice Dupe Atoki /Judge Rapporteur

Hon. Justice Edward Amoako Asante

Dr. Yaouza OURO-SAMA-Chief Registrar

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Done in Abuja, this 28th day of February 2025 in English and translated into French and Portuguese.

